

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANIEL I. THODY and WALTER-ELIYAH
THODY,

Defendants.

Case No. 1:19-cv-339

HON. JANET T. NEFF

MEMORANDUM OPINION AND ORDER

Now pending before the Court in this civil action is Defendant Daniel I. Thody's combined appeal and objections (ECF No. 118), to which the United States filed a response (ECF No. 120).¹ For the following reasons, the Court denies Defendant Daniel I. Thody's appeal and objections.

The United States initiated this action on May 1, 2019 against Daniel I. Thody and his father, Walter-Eliyah Thody, to reduce certain federal tax liabilities to a judgment against Daniel (Count I) and to enforce federal tax liens against property titled in Daniel's name located in Newaygo County, Michigan, against which Walter-Eliyah had recorded a purported security interest for \$950,000 (Count II) (Compl. [ECF No. 1] ¶¶ 7, 12 & 17-18). The United States filed an Amended Complaint on January 28, 2020 (ECF No. 51). The appeal at bar concerns the Magistrate Judge's September 30, 2020 Order granting the United States' motion to compel

¹ Defendant Daniel I. Thody also filed a Reply (ECF No. 139), which the Court did not consider inasmuch as a reply is not authorized by this Court's Local Rules. *See* W.D. Mich. LCivR 72.3. The Court will also deny the United States' motion for leave to file a sur-reply to the reply (ECF No. 141).

discovery (ECF No. 109). The objections at bar concern the Report and Recommendation entered that same day (ECF No. 110), recommending that this Court deny Defendant Daniel I. Thody's motion to dismiss.

Defendant's appeal from the Magistrate Judge's September 30, 2020 Order is properly denied. This Court will reverse an order of the Magistrate Judge only where it is shown that the decision is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); *see also* FED. R. CIV. P. 72(a); W.D. Mich. LCivR 72.3(a). Defendant argues that the Magistrate Judge's Order compelling discovery was "inappropriate," "if not completely moot," where he has "fully complied" with each interrogatory request posed by the United States (ECF No. 118 at PageID.541). However, Defendant's argument relies on the privilege that he previously asserted, *see* ECF Nos. 91-1 and 91-2, a privilege that the Magistrate Judge determined was both waived and lacking in merit, *see* ECF No. 109 at PageID.507-508. Defendant's argument fails to demonstrate that the Magistrate Judge's Order is either clearly erroneous or contrary to law. The appeal is therefore properly denied.

Defendant's objection to the Magistrate Judge's September 30, 2020 Report and Recommendation is also properly denied. An objection to a magistrate judge's report and recommendation must "specifically identify the portions of the proposed findings, recommendations, or report to which objections are made and the basis for such objections." W.D. Mich. LCivR 72.3(b). The court reviews *de novo* "those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* Defendant's objection fails to identify any factual or legal error by the Magistrate Judge in her jurisdictional analysis, and, for the reasons more fully stated by the United States in its response (ECF No. 120 at PageID.556-562), the Court discerns no compelling reason to consider the new arguments

Defendant includes, which were not presented to the Magistrate Judge. Accordingly, this Court adopts the Magistrate Judge's September 30, 2020 Report and Recommendation as the Opinion of this Court.

Therefore:

IT IS HEREBY ORDERED that the United States' Motion for Leave to File a Sur-Reply (ECF No. 141) is DENIED.

IT IS FURTHER ORDERED that Defendant Daniel I. Thody's Appeal (ECF No. 118) from the Magistrate Judge's Order (ECF No. 109) is DENIED.

IT IS FURTHER ORDERED that Defendant Daniel I. Thody's Objections (ECF No. 118) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 110) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendant Daniel I. Thody's Motion to Dismiss (ECF No. 96) is DENIED for the reasons stated in the Report and Recommendation.

Dated: January 7, 2021

/s/ Janet T. Neff

JANET T. NEFF
United States District Judge